IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIFTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 22756 of 2004

Between:

N. Hari Babu, S/o. N. Rama Rao,
R/o. Tilak Nagar, Nallakunta, Hyderabad.-500 044.

..... PETITIONER

AND

1 **The Govt of A.P., rep. by its Addl. Secretary, Tribal Welfare Department, Secretariat, Hyderabad.**
2 **The District Collector, Hyderabad District, Hyderabad.**

.....RESPONDENTS.

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a writ of Mandamus or any other appropriate writ, order or direction declaring the orders of the 1st respondent in Memo No. 9282/CV2/2004-1, Social Welfare (CV2) Department dt. 28.10.2004 in so far as rejecting the stay petition in respect of the orders of the 2nd respondent herein in proceedings No.D2/4273/2000 dt. 01.09.2004 as illegal and contrary to law, with further orders suspending the operation of the aforesaid orders of the 2nd respondent herein pending disposal of the appeal before the 1st respondent herein and grant such other relief or reliefs deemed fit and just.

Counsel for the Petitioner: MR.NOUSHAD ALI

Counsel for the Respondents: GP FOR SOCIAL WELFARE

The Court at the admission stage made the following :

The Hon’ble Sri Justice

K.C. Bhanu

W.P. No. 22756 of 2004

O R D E R:

Challenging the orders passed by the 1st respondent in Memo No.9282/CV2/2004-1, Social Welfare (CV2) Department dated 28.10.2004 rejecting the interim stay as against the orders passed by the 2nd respondent in proceedings No.D2/4273/2000 dated 1.09.2004 cancelling the caste certificate issued in favour of the petitioner as bad in law, the present writ petition is filed.

The Collector and District Magistrate, Hyderabad by his proceedings dated 1.09.2004 cancelled the social status certificate issued by then M.R.O., Amberpet. Challenging the same, the petitioner filed an appeal before the 1st respondent. Along with the appeal, a stay petition under Section 7(4) of A.P. (SCs, STs & BCs) Regulation of Issue of Community Certificate Act, 1993 (for short, 'the Act'). The said petition was rejected by the 1st respondent. Challenging the same, the present writ petition is filed.

Learned counsel for the petitioner vehemently contended that without giving any opportunity to the petitioner the stay petition has been rejected; that the 1st respondent, therefore, violated the principles of natural justice and that the order under challenge does not contain any reasons. Hence he prays to set aside the impugned proceedings. Learned counsel for the petitioner also contended that the 2nd respondent without giving any reasonable opportunity to the petitioner conducted enquiry behind his back and the material which is adverse to the person cannot be relied upon unless the same is made available to the said person. Along with the grounds, several contentions have been raised stating the manner in which the enquiry was conducted.

On the other hand, learned Government Pleader for Social Welfare contended that in the interlocutory application the Government is not supposed to record any reasons for rejecting the stay application and therefore the order under challenge does not suffer from any legal infirmities so as to call for interference. He also contended that in this petition the petitioner cannot be permitted to agitate the manner of conducting enquiry by the 2nd respondent since the same is subject matter in the appeal filed by the petitioner before the 1st respondent and hence he prays to dismiss the writ petition.

A social status certificate was issued by the then M.R.O. Amberpet. Afterwards, the District Collector by exercising the powers under Section 5(1) of the Act cancelled the said certificate. Against the orders of the 2nd respondent, admittedly an appeal is filed before the 1st respondent which is a statutory appeal. While filing the appeal, the petitioner filed an application to grant stay of all further proceedings under Section 7(4) of the Act, but the same has been rejected by the impugned proceedings, which reads as follows:

> " The attention of the District Collector, Hyderabad is invited to the references cited. He is informed that the appeal petition/stay petition filed by the Sri N.Hari Babu s/o N.Rama Rao, Hyderabad has been examined carefully and finally the stay petition in the appeal filed by the petitioner is rejected.
>
> However, the appeal is taken on the file for finalizing the individual social status.
>
> He is therefore requested to furnish parawise remarks and connected records on the appeal petition to Government immediately for disposing said appeal".

From a perusal of the above proceedings it is clear that no opportunity is given to the petitioner to putforward her case. So also,

the order does not contain any reasons of whatsoever for rejecting the stay petition. The 1st respondent ought to have assigned reasons in rejecting the stay application. Quoting the provision of law and rejecting the same cannot be said to be an order. Therefore, for the two grounds, namely, that the order does not contain any reasons and that no opportunity is given to putforward the case in the stay application, the order under challenge is liable to be set aside.

However, the learned counsel for the petitioner raised several contentions with regard to the manner of conducting enquiry by the District Collector and also the manner of conducting enquiry by the M.R.O. In my considered opinion, the contentions that were raised in the writ petition are not required to be gone into for the simple reason that the subject matter of the proceedings of the District Collector is under challenge before the 1st respondent. Admittedly, the appeal is pending before the 1st respondent. Therefore, the petitioner cannot be permitted to raise the same issue before this court. No doubt, alternative remedy is not a bar for exercising the jurisdiction of this court especially when there is violation of principles of natural justice, but the petitioner has already availed the statutory remedy of filing an appeal before the 1st respondent and it is pending. In such view of the matter, entertaining the writ petition to challenge the orders passed by the District Collector dated 1.09.2004 is nothing but usurping the powers of the appellate authority since the appeal is admittedly pending before the 1st respondent. In pursuance of the order passed by the 2nd respondent, the petitioner was removed from service. Therefore, at this stage it is not desirable to pass any interim orders since a direction can be given to the 1st respondent to dispose of the appeal filed by the petitioner.

The writ petition is accordingly disposed of setting aside the orders of the 1st respondent in Memo No.9282/CV2/2004-1, Social Welfare (CV2) Department dated 28.10.2004 and directing the

1st respondent to dispose of the appeal within a period of four months from the date of receipt of a copy of this order. In the circumstances, no costs.

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K.C. Bhanu, J.

Date: --12—2004.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Addl. Secretary, Tribal Welfare Department, Secretariat, Govt of A.P., Hyderabad.
2 The District Collector, Hyderabad District, Hyderabad.

3. 2CCs to G.P. for Social Welfare, High Court Buildings, Hyderabad (OUT).

4. 2CD copies.